

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

RECEIVED
U.S. DISTRICT COURT, CHARLESTON, SC
2014 JAN -9 A 10:20

Demetrius J. Smalls,
also known as Demetrius Jarod Smalls,

Plaintiff,

v.

Bruce Owens; D. Peters; Ray Nash; and
Sgt. Pumphries,

Defendants.

No. 2:13-cv-3374-RMG

ORDER

This matter is before the Court on the Report and Recommendation ("R&R") of the Magistrate Judge recommending that this Court dismiss this action without prejudice and without issuance and service of process pursuant to 28 U.S.C. § 1915. (Dkt. No. 9). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, filed this civil action for damages generally alleging wrongful conviction. (Dkt. No. 1). Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was assigned to a Magistrate Judge for all pretrial proceedings. Under established local procedure in this judicial district, the Magistrate Judge conducted a careful review of the complaint pursuant to the provisions of 28 U.S.C. § 1915 and in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319 (1980); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978). Following this review, the Magistrate Judge issued the present R&R recommending this action be dismissed without prejudice and without issuance and service of process. (Dkt. No. 9). Plaintiff did not file timely objections to the R&R.

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*


Discussion

After review of the record and the R&R, the Court finds that the Magistrate Judge applied sound legal principles to the facts of this case and therefore agrees with and wholly adopts the R&R as the order of the Court. The Court agrees with the Magistrate Judge that Plaintiff fails to state a claim for wrongful conviction or imprisonment under *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), because he has not alleged that his conviction has been called into doubt by direct appeal, post-conviction relief, writ of habeas corpus, or otherwise.

Conclusion

For the reasons set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 9). Accordingly, the Court dismisses this action without prejudice and without issuance and service of process.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

January 9, 2014
Charleston, South Carolina